

## No 9 Key Facts about Prohibition Notices

### 1. What is it?

A Prohibition Notice is a formal document that can be served by any inspector appointed under the Health and Safety at Work (HSW) Act 1974 – so that means Health and Safety Executive (HSE) inspectors as well as local authority Environmental Health Officers (EHOs).

### 2. Who gets it?

The Notice might be served on an individual, or the company, or both. Most commonly they are served on the employer, normally the company, or the person (e.g. supervisor) directly in charge of the work. If you are sole trader or a partner, you can expect it to be served on you personally. If you are a partner, don't forget to inform your fellow partners, as in law partners are jointly and severally liable for the partnership's affairs.

### 2. What does it mean?

The Notice confirms the inspector's view that you are carrying out an operation where there is an imminent risk of serious personal injury and that you must stop it immediately – until you have taken remedial action (this might be repairs or the implementation of specific safety precautions). Examples would include use of unguarded machinery, live working on electrical equipment and work on a fragile roof without use of suitable crawling boards. The notice will make it clear what action you should take. So, for example, work on the fragile roof would be allowed to continue once the required crawling boards were made available and put into use.

### 3. What about legal requirements?

Breach of legal requirements is not required for the inspector to serve a valid Prohibition Notice on you, but if he/she believes you are breaching the law (and if you are creating an immediate danger it's likely to be contrary to at least one piece of health and safety law), that should be stated in the notice.

### 4. Deferred Notices.

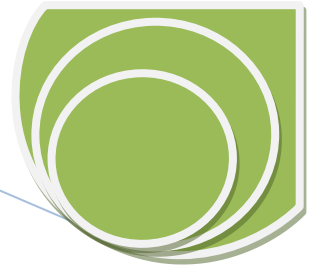
Prohibition Notices normally take effect there and then but in some circumstances they can be 'deferred', for example, if the risk is not imminent, or if it would cause a greater danger to shut down a process straightway. Either way, the notice will make it clear, and if you are in any doubt, check with the inspector. But there is no period of grace to comply, as would be the case with an Improvement Notice.

### 5. Making an appeal.

If you wish to appeal to the Employment Tribunal, you have 21 days to do so. Should you

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appeal though, the Notice remains in force until the Tribunal hearing. The Tribunal then has the power to reject, uphold or amend the Notice.

## **6. Appeals – what does the tribunal consider?**

If you appeal, the tribunal will focus on whether the Notice was lawfully served. For example, was the inspector correct to believe there an imminent risk of serious personal injury?

Since the key word is 'risk' (= potential danger), you could not use the fact that no accident had occurred as grounds for appeal.

## **7. Offences.**

It is a criminal offence to fail to comply with a Prohibition Notice. Courts tend to punish these cases severely as they take the view that since you've been given the opportunity to comply, the fact that you haven't is a serious matter – especially as by definition, there was imminent danger. You can therefore expect the fine to be higher than if ,no Notice had been served. You should certainly take legal advice if there is any likelihood of prosecution.

## **8. Fee for Intervention.**

If your enforcing authority is the HSE, you can also expect to be invoiced for the inspector's time at the current rate of £124 per hour under the HSE's 'Fee for Intervention' (FFI) scheme. This is quite separate from any fines or court costs that may be imposed and applies whether or not you comply with the Notice. But, as with an Improvement Notice, you can minimise these costs by complying quickly and hence not making the inspector spend more time with you than is necessary!

## **9. Action Required.**

You can resume work as soon as you have taken the action the Notice requires you to take, even though the inspector has not yet visited to check. Do though be very clear (by asking the inspector if necessary) that what you plan will be accepted, because not complying is such a serious matter. The outcome to avoid at all costs is that you resume work believing you've complied but the inspector doesn't agree – leaving you facing the very serious charge of 'not complying with a Prohibition Notice' contrary to s.33 of the HSW Act. Wherever possible, therefore, it's smart to wait for the inspector to confirm that what you've done is OK before resuming the prohibited activity.

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